



DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: March 2, 2017

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: MATHEW ENTERPRISE, INC., dba STEVENS CREEK CHRYSLER JEEP DODGE AND RAM v. FCA US, LLC
Protest Nos. PR-2484-16, PR-2485-16, PR-2486-16 and PR-2487-16

TYPE: Vehicle Code section 3060 Termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: November 22, 2016
- MOTIONS FILED: Respondent's Motion to Dismiss Protest
- COUNSEL FOR PROTESTANT: Halbert B. Rasmussen, Esq.
George N. Koumbis, Esq.
Arent Fox LLP
- COUNSEL FOR RESPONDENT: Mark T. Clouatre, Esq.
Adrienne L. Toon, Esq.
Nelson Mullins Riley & Scarborough LLP

EFFECT OF PROPOSED ORDER:

The Proposed Order grants Respondent's Motion to Dismiss and allows the dismissal (without prejudice) of the consolidated Protests (Nos. PR-2484-16 [Chrysler], PR-2485-16 [Dodge], PR-2486-16 [Jeep], and PR-2487-16 RAM]).

SUMMARY OF PROPOSED ORDER:

FCA, the franchisor, denies that it is terminating or intending to terminate the franchises and filed a Motion to Dismiss the Protests. The ALJ recommends that the Motion to Dismiss be granted (without prejudice) as the Board has no jurisdiction over Protestant's claims of "constructive termination" of the franchises as they are based upon: (1) FCA's refusal to approve Protestant's request to relocate; and (2) Protestant's assertions that the terms of a Proposed New Lease offered by FCA Realty were unreasonable. The Board is not empowered to act upon requests to relocate or adjudicate lease disputes.

Background Findings

- Stevens Creek Chrysler Jeep Dodge RAM is located at 4100 Stevens Creek Boulevard, San Jose. In 1996, Protestant became a franchisee for these line makes and originally occupied the premises under a 2-year lease with Chrysler Realty, LLC, with the belief that Protestant's owner had an agreement to purchase the realty. As a result of the bankruptcy of Chrysler LLC and its affiliates, the property passed to FCA Realty LLC. After FCA and FCA Realty refused to honor the claimed agreement of sale, Protestant brought suit in the California Superior Court but did not prevail. Since 1998 Protestant has been occupying the premises under what has become a "month-to-month" hold over tenancy per a provision in the prior lease.
- FCA Realty proffered a New Lease and Facilities Proposal but Protestant refused to sign it as Protestant believed its terms were not reasonable. Protestant submitted its Relocation and Facility Proposal but FCA declined the request. The intended new location is alleged to be only 0.6 mile from the current location with both being on Stevens Creek Blvd. Auto Row.
- Protestant also filed suit in Federal District Court alleging violations by FCA of the Automobile Dealers Day in Court Act (ADDCA); breach of the implied covenant of good faith and fair dealing; and violation of Section 3060, et seq. The Federal Court granted a motion to dismiss all three of these claims with the first and third claim dismissed without prejudice. The claim now before the Board relates to that part of FCA's motion to dismiss the claim in federal court that FCA violated Section 3060. FCA asserted that Protestant's claim in federal court for violation of Section 3060 should be dismissed as Protestant had failed to exhaust its administrative remedies and must first make its claims before the Board. The federal court agreed with FCA and dismissed this claim without prejudice. However, now that Protestant has filed the protests with the Board, FCA is asserting in its Motion to Dismiss the Protests that there are no remedies under Section 3060 that are available to Protestant as there is no termination threatened or occurring, thus the Board has no jurisdiction to hear the protests.
- The ALJ determined that the disputes involve the refusal of FCA to approve the relocation request and the lease situation between Protestant and FCA Realty. The claims of "constructive termination", upon which the Protests are based, would cease to exist if FCA approved the relocation request. Likewise, the disputes between FCA Realty and Protestants regarding the lease would also vanish if FCA approved the relocation request. Thus, the primary issue that would have to be addressed in what is claimed to be a "termination" protest is whether FCA was reasonable in declining to approve the request to relocate. The Board is not empowered to make such ruling.

RELATED MATTERS:

- Related Case Law: There are no published precedential court decisions applicable to these cases.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 331.2, 3060, 3061, and 3066.